

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

James Anthony Primus,)	C/A No. 4:13-768-JFA-TER
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Brian Stirling, SCDC Director; Tiffany N.)	
Richardson, O.D.C.,)	
)	
Defendants.)	
)	

The *pro se* plaintiff, James Anthony Primus, is a state inmate with the South Carolina Department of Corrections (SCDC). He brings this action pursuant to 42 U.S.C. § 1983¹ claiming that his due process rights were violated as a result of the placement of an alleged victim witness notification in his SCDC file. He contends that this notification requirement causes hardships with regard to transfers and job assignments.

The Magistrate Judge assigned to this action² has prepared a Report and Recommendation (ECF No. 46)³ and opines that the complaint should be dismissed for

¹ The plaintiff has filed this action *in forma pauperis* under 28 U.S.C. § 1915.

² The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b)(1).

³ The court declined to accept the Magistrate Judge's first Report and Recommendation (ECF No. 11), instead allowing the plaintiff to amend his complaint. The amended complaint currently before the court was filed on March 14, 2014 (ECF No. 37).

failure to state a claim. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was advised of his right to file objections to the Report and Recommendation and he has timely done so. The court has reviewed the objections *de novo* and will address them herein.

The Magistrate Judge notes that in his amended complaint, the plaintiff reiterates his allegations that a person other than the victim of his 1998 conviction for kidnapping was placed in his SCDC file as a victim witness to be notified upon plaintiff's release. He also alleges that defendant Richardson, an attorney with the Office of Disciplinary Counsel, breached certain professional and fiduciary duties.

The Magistrate Judge correctly suggests that the plaintiff has failed to allege any facts showing how the defendant Stirling (SCDC Director) was personally involved in any of the factual allegations claiming a constitutional violation. A § 1983 claim for supervisory liability cannot be based on the doctrine of respondeat superior or supervisory liability. This court agrees with the Magistrate Judge that defendant Stirling should be dismissed.

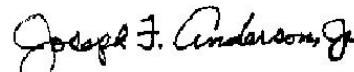
As to defendant Richardson, the Magistrate Judge opines that she is entitled to summary dismissal as well because prosecutors have absolute immunity for activities in or connected with judicial proceedings. While it does not appear that defendant Richardson acted as defense counsel for the plaintiff, to the extent she is named for performing traditional functions as counsel, she is not considered a person acting under color of state law for purposes of § 1983. This court agrees that defendant Richardson should be dismissed

from this action.

In his objection memorandum, the plaintiff requests that the court again allow him leave to clarify his initial complaint. The court respectfully denies the request. The plaintiff has already filed two amendments to his original complaint. He then notes that he is not versed in law and lacks access to his records. The remaining objections appear to repeat the allegations of his earlier amended complaints. The court finds the objections unpersuasive and as such, they are overruled.

After a careful review of the record, the applicable law, the Report and Recommendation, and the objections thereto, the court finds that the Magistrate Judge's recommendation is proper and incorporates it herein by reference. Accordingly, this action is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.



Joseph F. Anderson, Jr.
United States District Judge

July 29, 2014
Columbia, South Carolina